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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 WILLIAM FLEMING, an individual,

13 Case No.: 2:23-cv-00177-RFB-EJY

14 Plaintiff,

15 vs.

16 LAS VEGAS METROPOLITAN POLICE
17 DEPARTMENT, a Municipal Corporation;
18 OFFICER JAVON CHARLES, an individual;
19 OFFICER TIMOTHY NYE, an individual;
20 OFFICER GABRIEL LEA, an individual;
21 OFFICER CODY GRAY, an individual;
22 OFFICER SUPREET KAUR, as an
23 individual; OFFICER HALEY ANDERSEN,
24 as an individual; SERGEANT JOHN
JOHNSON, as an individual; CAPTAIN
DORI KOREN, as an individual; OFFICER
RICHARD PALACIOS, as an individual;
OFFICER PATRICK WHEARTY, as an
individual; OFFICER ANDREW WOOD, as
an individual; OFFICER IZAYA HARRIS, as
an individual; OFFICER CHAD ROWLETT,
as an individual; OFFICER RYAN FESLER,
as an individual; OFFICER NICHOLAS
PEREZ, as an individual; DOE OFFICERS V
– X, individuals.

25 Defendants.

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28 **PLAINTIFF'S UNOPPOSED**
MOTION FOR EXTENSION OF
TIME TO SERVE DEFENDANTS

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff William Fleming, by and through his counsel of record, hereby moves this
 3 Court for an order extending by seven (7) days the time in which to complete service of
 4 process upon Defendant Officers Izaya Harris, Chad Rowlett, Ryan Fesler, and Nicholas
 5 Perez in the above-captioned matter.

6 FRCP 4(m) mandates that, if a defendant is not served within 90 days after the
 7 complaint is filed, “the court—on motion or on its own after notice to the plaintiff—must
 8 dismiss the action without prejudice against that defendant or order that service be made
 9 within a specified time.” 90 days after the operative complaint (ECF No. 40) was filed is
 10 March 13, 2024.

11 FRCP 4(m) “requires a district court to grant an extension of time if good cause is
 12 shown and permits the district court to grant such an extension even absent good cause.”
 13 *Williams v. Bellagio Hotel & Casino*, No. 2:23-cv-00325-JAD-DJA, 2023 U.S. Dist. LEXIS
 14 157075, at *4 (D. Nev. Sep. 6, 2023) (quoting *Mann v. American Airlines*, 324 F.3d 1088,
 15 1090 n.2 (9th Cir. 2003)). Here, as argued below, good cause exists for failure to effectuate
 16 service.

17 Alternatively, Plaintiff demonstrates excusable neglect in failing to effectuate
 18 service. “District courts also ‘have broad discretion to extend time for service’ and should
 19 ‘consider factors like a statute of limitations bar, prejudice to the defendant, actual notice of
 20 a lawsuit, and eventual service.’” *Williams*, 2023 U.S. Dist. LEXIS 157075, at *4 (quoting
 21 *Efaw v. Williams*, 473 F.3d 1038, 1041 (9th Cir. 2007)).

22 Finally, on March 13, 2024, Plaintiff’s counsel spoke with Defendants’ counsel,
 23 who indicated Defendants would not oppose the instant request. Thus, this Court should
 24 extend the deadline to effectuate service upon Defendants by seven (7) days.

25 **A. Good Cause Exists to Extend the Service Deadline.**

26 “‘Good cause to avoid dismissal may be demonstrated by establishing, at a
 27 minimum, excusable neglect,’ and may be supported by a further showing that ‘the party to
 28 be served personally received actual notice of the lawsuit,’ ‘the defendant would suffer no

1 ‘prejudice,’ and ‘plaintiff would be severely prejudiced if his complaint were dismissed.’”
 2 *Williams*, 2023 U.S. Dist. LEXIS 157075, at *4 (quoting *Lemoge v. United States*, 587 F.3d
 3 1188, 1198 n.3 (9th Cir. 2009)).

4 Good cause exists here to extend the time for serving the above-named Defendants
 5 because of unexpected personal and medical issues, competing deadlines, and staffing issues
 6 for Plaintiff’s counsel.

7 Here, although Plaintiff cannot demonstrate that named Defendants have received
 8 notice of the lawsuit, they cannot demonstrate that they would suffer prejudice, as discovery
 9 has recently begun in this matter. Thus, named Defendants who will not ultimately be represented
 10 by the same counsel as other Defendants would have ample opportunity to obtain counsel and
 11 prepare for litigation. Plaintiff, by contrast, would be severely prejudiced. Thus, good cause
 12 exists to extend the service deadline by seven (7) days.

13 **B. Alternatively, Plaintiff Demonstrates Excusable Neglect and the Court
 14 Should Exercise Its Discretion to Extend the Service Deadline.**

15 To determine whether excusable neglect has been shown under FRCP 4(m), the
 16 court must examine the following factors: “(1) the danger of prejudice to the opposing party;
 17 (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for
 18 the delay; and (4) whether the movant acted in good faith.” *Bonham v. Daniels*, No. 2:21-cv-
 19 01566-CDS-VCF, 2023 U.S. Dist. LEXIS 164172, at *6 (D. Nev. Sep. 14, 2023) (quoting
 20 *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1261 (9th Cir. 2010)). Here, these factors
 21 weigh in favor of a finding of excusable neglect and granting a brief extension of the deadline
 22 to serve Defendants.

23 Here, there is very little danger of prejudice to Defendants, as little has occurred
 24 procedurally in this matter. *Bonham*, 2023 U.S. Dist. LEXIS 164172, at *6-7 (finding
 25 excusable neglect where “little has occurred procedurally, so that potential prejudice is not
 26 significant”). Indeed, discovery has recently begun in this matter. For similar reasons, the
 27 length of this delay in service—a mere seven days—would have little impact on judicial
 28 proceedings. Finally, Plaintiff is acting in good faith. Notably, the court “may extend time

1 for service of process retroactively after the 90-day service period has expired.” *Campbell v.*
2 *Nev. Dep’t of Corr.*, No. 2:20-cv-00634-CDS-VCF, 2022 U.S. Dist. LEXIS 189929, at *3
3 (D. Nev. Oct. 14, 2022) (citing *Mann*, 324 F.3d at 1090).

4 Finally, on March 13, 2024, Plaintiff’s counsel spoke with Defendants’ counsel,
5 Jackie Nichols, who indicated Defendants would not oppose the instant request, which
6 further evidences a lack of prejudice. Plaintiff’s counsel appreciates Defendants’ counsel’s
7 professional courtesy.

8 Therefore, Plaintiff respectfully moves for an extension of seven (7) days to
9 effectuate service on Defendants.

10 DATED this 13th day of March, 2024.
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13 /s/ Leo S. Wolpert
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21 IT IS SO ORDERED.
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24 U.S. MAGISTRATE JUDGE
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Dated: March 14, 2024